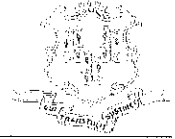


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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Andres Sosa,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-680

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Respondent(s)

August 13, 2013

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, September 11, 2013**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE August 30, 2013**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 30, 2013**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE August 30, 2013**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Andres Sosa
James Neil, Esq.

8/13/13/FIC# 2012-680/Trans/wrbp/PSP//GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Andres Sosa,

Complainant,

Docket # FIC 2012-680

against

Commissioner, State of Connecticut,
Department of Correction; and
State of Connecticut, Department of
Correction,

Respondents

August 9, 2013

The above-captioned matter was heard as a contested case on July 31, 2013, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, et al., Superior Court, J.D., of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated October 29, 2012, the complainant made a request to the respondents for the following:

“[a] a copy of the report filed by C/O Mr. Marcotte, C/O Mr. Bogalhas, Shake-down Supervisor Lt. Mr. Brown, U/M Captain Mr. Linares, 1st Shift Property Officer Mr. D. Peter on 10/22/12 1st shift during an inst. shake-down they did confiscated [sic] my seven (7) years [sic] old HOT POT according with A.D. 6.6 Reporting of Incidents, page 2 of 4 sec: 6-D Reporting of Confiscation[;]

[b] pursuant to A.D. 6.9 Control of Contraband and Physical Evidence, page 2 of 4 Sec: (5) Inmate Notification of Contraband Seize...a copy of the documentation showing the named officers did notified [sic] inmate (Sosa) of the confiscated HOT POT on

10/22/12 in accordance with A.D. 6.10 Inmate Property, page 3 of 18 sec: (5-B) Unauthorized Property[;]

[c] copy of the inmate property status and receipt form CN 61002 date 10/22/12 as required per A.D. 6.10, page 3 of 18 sec: (5-B)[;]

[d] pursuant to A.D. 6.9 Control of Contraband and Physical Evidence, page 2 of 4 sec: (6) – (E) Chain of Custody... a copy of activity, contraband/criminal physical evidence tag and chain of custody form CN 6901, attachment A, and of the contraband log to include the following data: (1) employee's name; (2) date and time; (3) reason; and (4) any other relevant information[;]

[e] pursuant to A.D. 6.9 Control of Contraband and Physical Evidence, page 2 of 4 sec: (6) – (C) Logs...a copy of the A&P property hardbound contraband on 10/22/12 which shall be maintained to include: (1) description of confiscated contraband; (2) any identifiable marking, including brand name, serial number and/or model number; (3) date and time of confiscation; (4) location where found; (5) person possessing contraband; (6) staff discovering contraband; (7) a record of any photos of contraband; (8) assigned number which shall be identified by a unique number which shall be prefixed by the facility's initials and the last two numbers of the calendar year followed by a dash (-) and sequential and uninterrupted numbers for logged contraband items [and] any other relevant data [;]

[f] pursuant to A.D. 6.9 Control of Contraband and Physical Evidence, page 2 of 4 sec: (6) – (B), Tagging...a copy of the contraband tagging upon confiscation... [;]

[g] copy/ies of any logging [sic] documentation, documents done by shake-down logging [sic] officer correctional treatment officer (CTO) Ms. Steam on 10/22/12 in regard of my confiscated HOT POT [; and]

[h] a copy of the #137 MacDougall L - (Lima) two (2) unit, unit log book, single page, on 10/22/12 showing the logging [sic] of the start of the inst. shake-down, lock-down and the end of such shake-down."

3. It is found that, by letter dated November 5, 2012, the respondents acknowledged the complainant's request and informed him that his request was being forwarded to the Freedom of Information liaison at MacDougall-Walker Correctional Institution.

4. By letter dated December 3, 2012, and filed on December 6, 2012, the complainant

appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records, described in paragraph 2, above. At the hearing, the complainant also requested the imposition of civil penalties against the respondents.

5. Section 1-200(5), G.S., defines "public records or files" as:

any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is found that the records requested by the complainant, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. With respect to the record described in paragraph 2[c], above, the respondents testified, and it is found, that they provided the complainant with a copy of such record.

10. With respect to the records described in paragraphs 2[b], 2[d], 2[e] and 2[f], above, the respondents testified, and it is found, that they do not exist.

11. With respect to the records described in paragraphs 2[a] and 2[g], above, the respondents testified that the information sought *may* be included in a final report concerning the October 22nd incident, but that such report is not yet complete. It is found that at the time of the complainant's October 29th request, the respondents did not have records responsive to the complainant's requests described in paragraphs 2[a] and 2[g], above.

12. With respect to the log book described in paragraph 2[h], above, the respondents

claim that such record is exempt from disclosure pursuant to §1-210(b)(18), G.S., because it identifies movement and procedures for shakedowns and lockdowns in the facility. They claim that disclosure of such information poses a safety and security risk.

13. Section 1-210(b)(18), G.S., exempts from mandatory disclosure:

Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers....

14. It is found that the information contained in the records described in paragraphs 2[h] and 12, above, are permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S. See Docket # FIC 2007-317; James Baker v. Warden, State of Connecticut, Department of Correction, Osborn Correctional Institution (disclosure of logs containing emergency

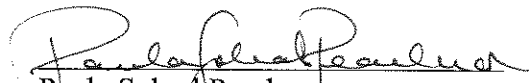
information that would reveal how the respondent responds to emergency situations found to be exempt from disclosure pursuant to §1-210(b)(18), G.S.); Docket # FIC 2008-507; Robin Elliott v. Commissioner, State of Connecticut, Department of Correction; Warden, State of Connecticut, Department of Correction, Corrigan-Radgowski Correctional Institution; and State of Connecticut, Department of Correction (emergency logs of the location of security personnel found to be permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.); Docket #FIC 2010-061; Robin Elliott v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (information regarding the location and relocation of inmates and staff, and emergency logs revealing the location of security personnel were found to be exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.).

15. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant in his complaint.

16. Based on the facts and circumstances of this case, there is no need to consider the imposition of a civil penalty.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.


Paula Sobral Pearlman
as Hearing Officer